

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF OKLAHOMA**

<b>DESIRAY J. ALLEN,</b>	)	
	)	
<b>Petitioner,</b>	)	
	)	
<b>v.</b>	)	<b>Case No. CIV-19-588-G</b>
	)	
<b>SCOTT CROW, Interim Director,</b>	)	
	)	
<b>Respondent.</b>	)	

**REPORT AND RECOMMENDATION**

Desiray J. Allen (Petitioner), a state prisoner in the custody of the Oklahoma Department of Corrections, seeks relief from this court under 28 U.S.C. § 2241. *See* Docs. 1, 6. United States District Judge Charles Goodwin has referred the matter to the undersigned Magistrate Judge for initial proceedings consistent with 28 U.S.C. § 636(b)(1)(B), (C). *See* Docs. 3, 10.

“A petition under 28 U.S.C. § 2241 attacks the execution of a sentence rather than its validity and must be filed in the district where the prisoner is confined.” *Haugh v. Booker*, 210 F.3d 1147, 1149 (10th Cir. 2000) (citation omitted). Petitioner is not confined in this district. Rather, Petitioner is incarcerated at the Oklahoma State Penitentiary (OSP), McAlester, Pittsburg County, Oklahoma, *see* Doc. 6, at 1, a facility located within the territorial jurisdiction of the Eastern District of Oklahoma. *See* 28 U.S.C. §116(b). Consequently, this Court lacks jurisdiction over his petition.

Nonetheless, “[j]urisdictional defects that arise when a suit is filed in the wrong federal district may be cured by transfer under the federal transfer statute, 28 U.S.C. § 1631, which requires a court to transfer such an action if the transfer is in the interest of justice.” *Haugh*, 210 F.3d at 1150 (citation and internal quotation marks omitted). It is within this court’s discretion to determine whether to transfer an action or instead to dismiss the action without prejudice. *See Trujillo v. Williams*, 465 F.3d 1210, 1222-23 (10th Cir. 2006).

Review of the instant petition reveals Petitioner is challenging his custodian’s execution of his sentence in Custer County Case No. CF-2004-118. Doc. 6, at 1. He alleges exhaustion or attempted exhaustion of administrative and state court remedies and asserts, in part, that the prison authorities have violated the prison’s policies by failing to answer and/or grant him relief on his grievances. *See id.* at 2-3, 5-6. No issue—including a statute of limitations issue—mitigates against the transfer of this matter to the appropriate judicial district for disposition.

### **RECOMMENDATION AND NOTICE OF RIGHT TO OBJECT**

For these reasons, the undersigned recommends that the interest of justice warrants the transfer of this matter to the United States District Court for the Eastern District of Oklahoma.

The undersigned advises Petitioner of his right to file an objection to this Report and Recommendation with the Clerk of Court on or before **September 26, 2019**, under 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72(b)(2). The undersigned further advises Petitioner that failure to file a timely objection to this Report and Recommendation waives his right to appellate review of both factual and legal issues contained herein. *See Moore v. United States*, 950 F.2d 656, 659 (10th Cir. 1991).

This Report and Recommendation disposes of all issues and terminates the referral to the undersigned Magistrate Judge in the captioned matter.

ENTERED this 5th day of September, 2019.

  
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SUZANNE MITCHELL  
UNITED STATES MAGISTRATE JUDGE